9

D.B. CIVIL SPECIAL [W] APPEAL NO.460/2006.
[EXECUTIVE ENGINEER, JODHPUR VS. VIJAY DUTT VYAS & ANR.]
DATED : 04.01.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.S.G.Ojha for the appellant.

*****

We have heard learned counsel for the appellant.

The appellant challenges the order of learned Single Judge dated 17.05.2005.

The chequered history of the case shows that the respondent was in the employment of the appellant and his services were terminated on 01.07.1982. The termination of service was made subject matter of industrial dispute which was decided by Labour Court, Jodhpur vide award dated 16.02.1987. The termination of services vide order dated 01.07.1982 was held to be invalid and direction was issued to reinstate the workman and to allow the backwages w.e.f. 01.08.84. The present appellant was directed to reinstate the workman within one month from the date of the award and to pay arrears.

According to the respondent workman he appeared before the employer to join his duties on 01.05.1987 but he was not allowed to join the duties until 07.07.1989. In the first instance the respondent workman made an application under Section 33 C [2] for quantification of emoluments to which he was entitled from 01.05.1987 to 07.07.1989 in terms of Award. That application was rejected without deciding the issue, whether the workman presented himself on 01.05.1987 for joining the duties and the employer did not allow him to join the duties or he voluntarily remain absent, inter alia on the ground that on the finding of this issue depended the entitlement of the workman to claim remuneration for the period w.e.f. 01.05.1987 to 07.07.1989 and finding in this regard in proceedings under Section 33 C [2] was likely to effect the outcome of the notices issued to the workman about his willful absence from the duty during this period.

It was also observed by the Labour Court that the proceedings under Section 33 C [2] are in the nature of execution proceedings and substantive questions cannot be decided.

This led to raise another industrial dispute about entitlement to the wages during 01.05.1985 to 07.07.1989 under the Award. The dispute was referred to Labour Court and once again by

its award dated 18.12.1997 the Labour Court found that the workman did presented himself for joining the duty on 01.05.1987 but the employer did not allow him to join and instead resorted to treat him wilful absent from duty. As a result of the aforesaid finding the Labour Court directed the appellant employer to make payment of emoluments w.e.f. 01.05.1987 to 07.07.1989.

Aggrieved with the aforesaid award dated 01.08.2003 a writ petition was preferred by the present appellant and which has been dismissed by the learned Single Judge vide his judgement under appeal considering that finding of facts reached by Labour Court that the petitioner did presented himself before the employer to join the duties on 01.05.1987 but was not allowed to join duty is not interfered with. The controversy strictly relates to finding of fact arrived at by the Tribunal which has not been shown to be vitiated so as to require to be corrected by issuing a writ of certiorari.

We therefore, do not find any merit in this appeal. The appeal is therefore, dismissed in limine.

[CHATRA RAM JAT], J. **[RAJESH BALIA], J.**

mamta